

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

ADAMS-WYOMING PROPERTIES  
Respondent

Case No.: I-00-70181

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985, as amended (D.C. Official Code §§ 2-1801.01 *et seq.*), and Title 21, Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction served October 4, 2001, the Government charged Respondent Adams-Wyoming Properties with a violation of 21 DCMR 700.3 for allegedly failing to properly containerize solid wastes.<sup>1</sup> The Notice of Infraction alleged that Respondent violated § 700.3 on October 3, 2001, at 1801 Wyoming Avenue, N.W. (the “Property”), and sought a fine of \$1,000.

Respondent filed a timely answer and plea denying the charge set forth in the Notice of Infraction, and an evidentiary hearing was held on January 23, 2002. Gerard Brown, the

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<sup>1</sup> 21 DCMR 700.3 provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

charging official in the case (the “Inspector”), appeared on behalf of the Government. David Foley, vice president of Respondent, along with Russell Adams, property manager, appeared on behalf of Respondent. Based upon the testimony of the witnesses and my evaluation of their credibility, the admitted documentary evidence, and the entire record in this matter, I now make the following findings of fact and conclusions of law:

## **II. Findings of Fact**

1. At all times relevant to this matter, Respondent Adams-Wyoming Properties owned the Property, which houses apartments and other commercial units. Petitioner’s Exhibit (“PX”) 100.

2. On October 3, 2001, the Inspector visited the rear of the Property and observed an open trash receptacle overflowing with plastic bags, some of which contained household garbage, cardboard boxes and other debris. PX 101 and 102.

3. Respondent has undertaken significant efforts to address the rodent problem in the area around the Property, including installing wire mesh flooring to combat burrowing, using pest control services on a routine basis, and contracting for trash hauling services four times a week. *See* Respondent’s Exhibits (RX”) 200, 201, 204-208. Because trespassers often illegally dump their trash in Respondent’s receptacles, however, Respondent’s efforts to maintain the Property are sometimes frustrated. In an effort to combat this, Respondent has posted signs near its trash receptacle for its tenants to be watchful for illegal dumping.

4. Because it feels that such efforts would not be successful, Respondent has not attempted any methods to secure its trash receptacle from unauthorized dumping.

5. There is no evidence in the record of a history of non-compliance on the part of Respondent.

### **III. Conclusion of Law**

1. By having open trash containers filled with plastic bags and other debris, Respondent violated 21 DCMR 700.3 on October 3, 2001. *See DOH v. Washington Rehabilitation*, OAH No. I-00-20331 at 3-4 (Final Order, March 12, 2002) (noting that such conditions create an opportune environment for rodents to “feed and breed”); *DOH v. Danner*, OAH No. I-00-70193 at 3 (Final Order, January 31, 2002) (noting that “[t]he storage of wastes in open trash cans and on the ground at Respondent’s building violated [§ 700.3] because rats easily could obtain access to food items in the plastic bags”). The Rodent Control Act of 2000 authorizes a fine of \$1,000 for a first violation of this regulation.<sup>2</sup> *See* 16 DCMR §§ 3201.1(a)(1) and 3216.1(b).

2. Respondent asserts that the conditions at the Property observed by the Inspector were likely the result of illegal dumping. Such an assertion, even if true, does not absolve Respondent of liability for the violation, because § 700.3 imposes strict liability upon an owner of property where a violation occurs, regardless of the source of the offending waste. *See generally Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203-04 (D.C. 1995); *see also DOH v. Young*, OAH No. I-00-20332 at 3-4 (Final Order, March 12, 2002) (noting that “[t]he purpose of § 700.3 and the increased fines enacted by the Rodent Control Act of 2000 is to give

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<sup>2</sup> The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

property owners a greater motivation to take all necessary steps to control conditions that can lead to an increase in the rat population”).

3. Moreover, Respondent’s mere speculation that efforts to secure its dumpster, perhaps through the use of locks or fencing, would ultimately be unsuccessful does not excuse its responsibility to comply with the requirements of § 700.3. *See Bruno*, 665 A.2d at 203; *DOH v. Lin*, OAH No. I-00-70185, at 2-3 (Final Order, January 29, 2002) (finding conditions leading to violation of § 700.3 “foreseeable and easily preventable” where respondents noted long-standing problem of homeless persons rummaging through their trash, but undertook no efforts to secure trash receptacle); *see also* FED R. EVID. 602 (“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter . . .”).

4. This administrative court recognizes, however, Respondent’s significant efforts to comply with the requirements of § 700.3, including the on-going utilization of pest control services and almost daily trash hauling. In light of these efforts, as well as the lack of a history of noncompliance, I will reduce the fine to \$500.<sup>3</sup> D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.02(b)(6); U.S.S.G. § 3E1.1; 18 U.S.C. § 3553.

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<sup>3</sup> It bears some mentioning here that on December 4, 2001, this administrative court received an unexecuted letter from an entity purporting to be the “Kalorama/Wyoming Rat Pack” (“Group”), which requested the dismissal of this case. The basis for the request appears to be that the Group, a coalition of area residents and businesses brought together by an ANC Commissioner, has undertaken a grass-roots initiative to advise and educate property owners in the community about potential rodent and litter control problems prior to those property owners being formally sanctioned. The Government has opposed the Group’s request.

While this administrative court applauds any lawful effort to educate the public on these important public health issues, such initiatives neither override the Government’s obligation to enforce the provisions of the Rodent Control Act of 2000, nor this administrative court’s obligation under the Civil Infractions Act of 1985 to adjudicate the same, unless and until those laws are changed. There

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this \_\_\_\_ day of \_\_\_\_\_, 2003:

**ORDERED**, that Respondent shall pay a fine in the total amount of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that, if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

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is nothing in the record to suggest that has happened here. Accordingly, the Group's request that the Notice of Infraction be dismissed, assuming in the first instance, but not deciding here, that it is procedurally appropriate for the Group to make such a request under these circumstances, shall be denied.

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**/f/ 01/08/03**

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Mark D. Poindexter  
Administrative Judge